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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 970

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

Appellant,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, The CHESAPEAKE AND OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

ERNEST A. BALLARD,
WILLIAM F. PRICE,
WALTER I. DEFFENBAUGH,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

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BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

Appellant,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PERE MARQUETTE RAILWAY COMPANY, AND WABASH RAILROAD COMPANY,

Plaintiffs-Appellees,

INTERSTATE COMMERCE COMMISSION,

Intervening Plaintiff-Appellee,

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, CHICAGO JUNCTION RAILWAY COMPANY, AND THE NEW YORK CENTRAL RAILROAD COMPANY,

Defendants-Appellees

STATEMENT OF PLAINTIFFS-APPELLEES OF GROUNDS IN OPPOSITION TO THE APPELLATE JURISDICTION OF THE ABOVE COURT, PURSUANT TO SUPREME COURT RULE 12

Plaintiffs-Appellees state the following matters and grounds against the jurisdiction of this Court as asserted by the appellant herein, in its statement of the basis of the

appellate jurisdiction, filed herein on the 6th day of January, 1947, as required by Rule 12 of the Supreme Court.

1. The statutes relied on by the appellant herein to sustain the appellate jurisdiction of this Court, namely, the Judicial Code, Section 238 (28 U. S. C. A. 345), the Judicial Code, Section 210 (28 U. S. C. A. 47 a) and 28 U. S. C. A. Section 44 are not applicable to this case because the order of the Court below denying appellant's petition to intervene is not a final and appellable order, as is apparent from the nature of the suit and the allegations of appellant's petition to intervene.

The Complaint of Plaintiffs-Appellees (R. 3-57)

As shown by the allegations of the complaint filed herein, this is a suit under paragraph (12) of Section 16 of Part I of the Interstate Commerce Act (49 U. S. C. A. Sec. 16, par. 12) (R. 7) for the purpose, among others, of enjoining disobedience of an order of the Interstate Commerce Commission (hereinafter called the Commission) entered May 16, 1922, in the *Chicago Junction* case, 71 I. C. C. 631.

Plaintiffs are eight trunk line carriers engaged, *inter alia*, in the transportation by railroad of carload shipments of livestock, other than hogs and sheep, from the Union Stock Yards, Chicago, Illinois, to destinations east and southeast of Chicago (R. 5).

Defendants are The New York Central Railroad Company (herein called the Central), The Chicago River and Indiana Railroad Company (herein called the River Road), and Chicago Junction Railway Company (herein called the Junction) (R. 5).

The Central is a trunk line carrier engaged, *inter alia*, in the same transportation as that of plaintiffs above referred to. The River Road is a switching line serving the Union Stock Yards, all of the capital stock of which

was acquired by the Central on May 19, 1922, pursuant to authority granted by said order of May 16, 1922, on certain conditions. The Junction is a railroad company which on May 16, 1922, and on the same conditions, leased its entire railroad to the River Road for 99 years, and thereafter, at the option of the lessee, in perpetuity (R. 5-6, 9).

Said order of May 16, 1922, was entered on an application, filed by the Central with the Commission on December 28, 1920, for approval, *inter alia*, of the following proposed transactions:

> "(a) The purchase by the Central of all of the capital stock of the Chicago River & Indiana Railroad Company, hereinafter termed the River Road;
>
> "(b) The leasing to the River Road of the properties (owned and leased) of the Chicago Junction Railway Company, hereinafter termed the Junction, for a term of 99 years and thereafter, at the option of the lessee, in perpetuity." (R. 7)

The report and order of the Commission (R. 20-46) entered on said application approved and authorized the acquisition by the Central of the control of the River Road by the purchase of its capital stock at a price not exceeding the sum of $750,000; approved and authorized the acquisition by the River Road of the control of the property (owned and leased) of the Junction by lease as set forth in said report; and provided further as follows (71 I. C. C. p. 650):

> "That the purchase and sale of said stock and the making of said lease, as herein authorized, shall in all future proceedings, judicial as well as administrative, to which the carriers above named, or any of them, may be parties, be deemed and taken as conclusive evidence of their acceptance of and agreement to abide by the conditions enumerated in said report and numbered from 1 to 17, inclusive." (R. 46)

The conditions so referred to included the following condition (71 I. C. C. p. 639):

> "3. The present traffic and operating relationships existing between the Junction and River Road and all carriers operating in Chicago shall be continued, in so far as such matters are within the control of the Central." (R. 31)

After having enumerated the foregoing conditions in said report, the Commission made the following finding (71 I. C. C. p. 641):

> "*Subject to the observance of the above conditions we find that the acquisition* by the Central of the capital stock of the River Road and the leasing to the River Road of the properties (owned and leased) of the Junction *will be in the public interest.*" (Italics ours.) (R. 33)

On May 19, 1922, pursuant to the approval and authorization granted in said order of May 16, 1922, the Central acquired control of the River Road by the purchase of its capital stock, and the River Road acquired control of the property (owned and leased) of the Junction by lease. Said control of the River Road by the Central and of the property of the Junction by the River Road has continued from that date down to the present time and is still in effect (R. 9).

On December 3, 1928, the Commission made and entered its report on further hearing and order in said *Chicago Junction* case (150 I. C. C. pp. 32-38) in which it amended condition 14 of its report and order of May 16, 1922, but said amendment is in no way pertinent to any issue in this case. As so amended said report and order of May 16, 1922, are still in full force and effect (R. 9-10).

On January 15, 1929, the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding entitled "The Baltimore and Ohio

Railroad Company, et al. v. United States of America, et al., In Equity No. 3427," in which all of the plaintiffs herein or their respective predecessors in interest and all of the defendants herein were parties, entered a final decree with respect to said order of May 16, 1922, by which it found and decreed as follows:

> "* * * and the court having heard arguments of counsel with reference to the matter, finds and decrees that the original order of the Interstate Commerce Commission, approving the execution of said lease as modified by its supplemental decision and order of December 3, 1928, is valid and binding upon all of the parties." (R.10.)

From May 20, 1922, to the present time the Central has had and now has control of the traffic and operating relationships existing between the Junction and the River Road on the one hand and the plaintiffs, respectively, on the other hand (R.10).

On May 16, 1922, and for many years prior thereto, plaintiffs moved empty livestock cars used for the loading of livestock, other than hogs and sheep, *with their own power and crews* from their respective lines, via their respective connections with the line of the Junction now operated by the River Road under said lease of May 19, 1922, to places of loading on said line in said Union Stock Yards and, after they had been loaded, moved said cars from said places of loading *with their own power and crews* over said line to its connections with their respective lines and thence to destinations as consigned and routed by the shippers (R. 7).

Referring to this operating practice the Commission, in its report accompanying the order of May 16, 1922, said (71 I. C. C. p. 633):

> "All parties concede that that is the only practical method of handling that traffic" (R. 23).

For the privilege of so moving said cars plaintiffs, respectively, on and immediately prior to May 16, 1922, and continuously thereafter to February 1, 1946, paid the River Road and the River Road accepted $1.00 per car, loaded and empty. On or about January 25, 1946, the Central and the River Road notified plaintiffs that on and after February 1, 1946, plaintiffs would not be permitted to move said stock cars as aforesaid, and that such cars, when destined to places of loading on the line of the River Road in said Union Stock Yards would be moved by the power and crews of the River Road from the point of interchange with plaintiffs, respectively, on the line of the River Road to such places of loading and after they had been loaded at such places of loading by shippers, would be moved thence by the power and crews of the River Road to the points of interchange with plaintiffs, respectively, on the line of the River Road, and that at such points they would be delivered by the River Road to the plaintiffs, respectively, and that the charge of the River Road for such handling would be $12.96 per outbound loaded car instead of the charge of $1.00 per car loaded and empty, theretofore charged to and paid by the plaintiffs (R. 10-11).

On and after February 1, 1946, the Central and the River Road proceeded to act in accordance with said notice and this action was brought by the plaintiffs on February 12, 1946, to compel obedience by the defendants to condition No. 3 in said order of May 16, 1922, it being alleged that the aforesaid action of the defendants pursuant to said notice of January 25, 1946, was in violation of said condition (R. 11-13).

Intervention by the Commission

The Commission filed a petition to intervene as party plaintiff and on February 21, 1946, by order of the Court was given leave to intervene as a party plaintiff and to file

its complaint of intervention. The complaint of the Commission alleged that the action of the defendants Central and River Road as above outlined was in violation of the Commission's order of May 16, 1922, and asked a preliminary and a permanent injunction against defendants compelling obedience to condition No. 3 of said order (R. 58-63).

Stipulation of Facts (R. 64-74)

Plaintiffs, defendants and the Commission entered into a stipulation of facts to be considered as evidence in the cause on the hearing on the motions of the plaintiffs and the Commission for a preliminary injunction, which facts were to be taken as true and binding on the parties except that objections might be made to the relevancy and materiality thereof. The stipulation of facts admitted as true the facts above outlined from the allegations of the complaint (R. 59-72). Said stipulation of facts also recited that the Brotherhood of Railroad Trainmen (appellant herein), bargaining agent under the Railway Labor Act for River Road trainmen, having failed to settle certain disputes—among others a demand, claimed by said Brotherhood to be based upon a contract with the River Road, that River Road trainmen be given the work of moving and switching the livestock cars hereinabove referred to—notified the River Road, under authority of an almost unanimous strike vote of said trainmen that unless said disputes were settled before 10:30 P. M. January 23, 1946, River Road trainmen would go out on strike at that hour. Under continued threat of such a strike the River Road shortly before the hour set for said strike made an agreement with said Brotherhood which, among other things, provided that said work of moving and switching livestock cars be given to River Road trainmen. Said stipulation further recited that J. E. McKee, Vice-President of the River Road and

of the Central, participated in the negotiations with the Brotherhood and signed the foregoing agreement as Vice-President of said railroads (R. 72).

The Preliminary Injunction (R. 75-87)

On March 14, 1946 (R. 75) the court below entered a preliminary injunction pending the further order of the Court enjoining the defendant railway companies, "their respective officers, agents, representatives, employees and successors, and all other persons in active concert and participation with them," from failing and neglecting to obey said order of May 16, 1922, with respect to the transportation of livestock other than hogs and sheep from said Union Stock Yards, and from violating condition No. 3 of said order in the like respect, and commanding them to permit plaintiffs to move their said cars over the line of the River Road as had been the practice prior to February 1, 1946 (R. 85-87).

Thus the form and scope of the injunction followed substantially paragraph (d) of Rule 65 of the Rules of Civil Procedure for District Courts of the United States, which provides that an injunction "is binding only upon the parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Appellant's Motion to Intervene (R. 135-146)

On May 20, 1946 (R. 134) the appellant presented to the court below its motion to intervene in this cause. This appeal has been taken from the order of the court below denying said motion.

Said motion to intervene alleges that for many years the appellant "has acted as the collective bargaining represen-

tative for all persons employed as trainmen by the defendant, The Chicago River and Indiana Railroad Company." (R. 135). It was as such representative of the River Road trainmen that appellant sought to intervene. The motion alleges that under a contract made by the appellant with the River Road on behalf of the latter's trainmen, those trainmen are entitled to do the work that has heretofore been done by employees of the plaintiffs in their operations over the line of the River Road. The motion does not allege definitely when this so-called contract right originated except that the contract "has been in effect for several years last past" (R. 136). It is alleged that the appellant on behalf of the River Road trainmen "for some time" protested (R. 136) to the River Road over the failure of the River Road to permit its trainmen to do said work and that on January 23, 1946, the River Road made a settlement with the appellant to the effect that River Road's trainmen should do the work. This settlement was in the form of a "written interpretation" of the alleged agreement (R. 137). From the allegations of the motion it is evident that the alleged original agreement was ambiguous in its terms and the resultant ambiguity was not resolved in favor of the trainmen until January 23, 1946. However, this point would appear to be of no importance since there is no allegation that the alleged contract existed on May 16, 1922, the date of the Commission's order, or for many years thereafter. Manifestly it could not have been in existence at the date of the order since the effect of the order was to continue the *status quo* as to the operating practices here involved, and hence the *status quo* of both the employees of the plaintiffs and of the River Road, which had existed for many years.

The appellant therefore is basing its right to intervene upon an alleged contract with the River Road which is

directly in conflict with the order of the Commission and which was made after, and apparently long after, the order of the Commission was entered.

Thus appellant's motion to intervene does not allege facts which, if true, would permit it to intervene as a matter of right. This is true for several reasons, which we briefly state as follows:

(a) The River Road Could Not, Through a Purported Contract With Appellant, Create any Rights in its Trainmen Which Would Nullify or Render Unenforceable the Antecedent Order of the Commission.

The duties imposed upon the defendant companies by condition No. 3 of the Commission's order are duties imposed not only for the benefit of the plaintiffs but in the public interest, pursuant to authority granted the Commission under the Interstate Commerce Act. The order of the Commission here involved was issued pursuant to paragraph (2) of Section 5 of the Interstate Commerce Act (49 U. S. C. A. Sec. 5 (2)).

The criterion by which the Commission is to be governed in issuing orders in exercise of the authority conferred by said Section 5 (2) is the public interest.

N. Y. Central Securities Co. v. *U. S.*, 278 U. S. 12, 24.
Texas v. *U. S.*, 292 U. S. 522, 530.

Obligations so imposed by the Commission in the public interest may not be terminated by a court, but only by the Commission.

Thompson, Trustee, v. *Texas Mexican Railway Co.*, 66 S. Ct. 937, 945.

A fortiori they cannot be affected or impaired by any agreement between a carrier and its employees.

(b) **Appellant's Motion to Intervene, With the Accompanying Motion to Vacate the Preliminary Injunction, Show that Appellant is in Fact Attempting a Collateral Attack Upon the Order of the Commission, Which is Not Permitted.**

Paragraph (c) of Rule 24 of the Rules of Civil Procedure requires a motion to intervene to be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The only pleading which accompanied appellant's motion to intervene was a motion to vacate the preliminary injunction, to assess damages against the plaintiffs on account of such injunction, and for summary judgment in favor of appellant (R. 148-153). The motion is therefore in effect an attack upon the order of the Commission and an attempt to have the Court nullify the same through a refusal to enforce it.

Under the provisions of paragraph (12) of Section 16 of the Interstate Commerce Act (49 U. S. C. A. Sec. 16 (12)), pursuant to which this suit is brought to enforce obedience to the order, the only issue before the Court is whether the order was regularly entered and duly served (mere formal matters), and whether it has been violated. If the Court so finds, the statute is mandatory:

> "The court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise."

In such a proceeding the defendant may not question the validity of or otherwise attack the order. Suits to set aside orders of the Commission may be tried only under the Urgent Deficiencies Act, 28 U. S. C. A. Sec. 47, before a court of three judges.

Powell v. *United States*, 300 U. S. 276, 288.
Interstate Commerce Commission v. *Consolidated Freightways*, 41 F. Supp. 651, 655.

The mere fact that appellant's pleading, tendered with its motion to intervene, does not ask that the order be declared invalid, does not establish that the purpose of the intervention is not an attack upon it. Any position taken by appellant which would deny to the order its full and legitimate effect, and the right to its enforcement, is essentially an attack upon the order itself.

Venner v. *Michigan Central R. R. Co.*, 271 U. S. 127, 130.

Furthermore, any question as to the validity of the order is, by reason of the above-mentioned final decree entered by the court below on January 15, 1929, *res judicata* as to the River Road and as to appellant, whose claim is based upon a subsequent contract with that road.

Johnson Co. v. *Wharton*, 152 U. S. 252, 257.
Cromwell v. *County of Sac*, 94 U. S. 351, 352.

(c) If Appellant Has a Legitimate Complaint Against the Order, Appropriate Remedies are Available to it.

If the trainmen, whom appellant purports to represent, have any rights not stemming from the contract with the River Road which are invaded by the order, it may bring suit under 28 U. S. C. A. Sec. 47 to set aside the order. As above shown, this is the only way in which the order may be attacked in the courts.

Furthermore, condition No. 17 of the order provides (Complaint, p. 30):

> "Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction is retained to reopen the proceeding on our own motion for the same purpose."

Appellant should be remitted to a choice of those remedies and should not be allowed to enter this proceeding for the purpose of attacking the order.

(d) **Neither the Allegations of the Motion to Intervene Nor the Accompanying Motion to Vacate the Preliminary Injunction Show That the River Road Trainmen Will Sustain Any Loss From the Enforcement of the Order.**

The allegations of the motion to intervene are that, under appellant's contract with the River Road, the latter agreed that its trainmen should be permitted to do the work theretofore performed by plaintiffs' employees. In addition, the affidavit in support of the motion to vacate the preliminary injunction, etc., alleges that the employees of the River Road "are losing work to which they are entitled and wages therefor believed to be in excess of $200 per day" (R. 158).

The claim is one for special damages, and it is well settled that the allegations in support of such a claim must be sufficient to show that damage necessarily resulted.

The Director, 26 Fed. 708, 713.
Dissette v. *Dost*, 280 Fed. 455, 456.
Gray v. *Shoonmaker*, 30 F. Supp. 1019, 1023.

The rule is not satisfied here. While the allegation is made that the employees represented by appellant are being deprived of particular work that they are entitled to do, it is not alleged that they are not now working full time and therefore could do the work in question if permitted to. This is a vital defect in appellant's allegation of damages.

The above-mentioned affidavit also alleges that the River Road employees "are now filing time claims against said carrier arising out of such violation (of the alleged con-

tract between appellant and the River Road) but have been paid nothing on account thereof" (R. 158). It is not clear that this is intended to be an allegation of damages suffered as a result of the injunction. It is entirely different from the theory of damages through deprivation of work above discussed. Whether this allegation states a valid claim or not, it does not state one *against the plaintiffs.* If the claims referred to are valid, the employees of the River Road may proceed *against that company.* But those claims will not be passed upon in this suit, and the fact that they exist does not show the River Road employees will suffer a loss from the enforcement of the Commission's order in this suit. It shows the contrary.

(e) Assuming, Arguendo, That the Appellant Has a Valid Contract With the River Road, Such Fact Would Not Entitle it to Intervene.

Rule 24 (a) of the Rules of Civil Procedure giving an absolute right to intervene in certain cases presupposes a direct interest in the issues. As the courts and text writers have consistently pointed out, this was the case when intervention was governed by former Equity Rule 37, and Rule 24 (a) merely continues in effect Rule 37.

In *Pipe Line Co.* v. *U. S.*, 312 U. S. 502, this Court, in an opinion by Mr. Justice Frankfurter, at page 508, characterized Rule 24 (a) as containing "the codification of general doctrines of intervention."

To the same effect are *Babcock* v. *Town of Erlanger*, 34 F. Supp. 293, 295; *Jewell Ridge Coal Corp.* v. *Local 6167, United Mine Workers of America*, 7 Fed. Rules Serv. 460; 6 Cyclopedia of Federal Procedure (2nd edition), pp. 477, 479, 480, 482.

In *Smith* v. *Gale*, 144 U. S. 509, this Court said (p. 518):

> "To authorize an intervention, therefore, the interest must be that created by a claim to the demand or some

part thereof in suit, or lien upon the property, or some part thereof, in suit, or a claim to or lien upon the property, or some part thereof, which is the subject of litigation."

The River Road trainmen have no direct interest in or claim to the obligation of the defendant companies embodied in the order of the Commission which this suit seeks to enforce. Even though the incidental effect of the judgment might be to deprive them of the work which it is alleged the River Road has agreed they may do, nevertheless the judgment would not deprive them of any rights which they might have against the River Road for breach of their alleged contract. Neither the meaning nor the validity of that contract is in issue.

That the trainmen's interest in having the River Road free to specifically perform its alleged contract with the appellant is not such an interest as to permit appellant to intervene as a matter of right is established by the case of *United States* v. *California Canneries*, 279 U. S. 553, 556. In that case California Canneries had a very valuable contract with Armour & Co. which the decree entered in that suit rendered it impossible for Armour & Co. to perform. Nevertheless the court held California Canneries not entitled to intervene.

(f) **No Statute of the United States Confers on the Appellant an Unconditional Right to Intervene.**

Neither 49 U. S. C. A. Sec. 17 (11) nor 28 U. S. C. A. 45a confers upon appellant "an unconditional right to intervene" within the meaning of 24 (a) of the Rules of Civil Procedure.

49 U. S. C. A. Sec. 17 (11) was incorporated in the Interstate Commerce Act by the Transportation Act of 1940 (Sec. 12, 54 Stat. L. c. 722 at p. 913). Section 12 of that

Act as it appears in the Statutes at Large carries this heading:

> "Commission procedure; delegation of duties; rehearings."

The same heading appears in United States Code Annotated (49 U. S. C. A., Sec. 17). That section relates only to proceedings before the Commission.

If 28 U. S. C. A., Section 45a, relates to a suit such as this, it confers a right to intervene only on those "who are interested in the * * * suit." An interest must be shown. *Boston Towboat Co.* v. *U. S.*, 321 U. S. 632, 633-634. The right to intervene is, therefore, not unconditional. What interest must be shown? As there is no statutory definition of such "interest", the answer must be found in the decisions dealing generally with the interest a petitioner must show in order to be entitled to intervene in a suit. Appellant has not alleged an interest sufficient to entitle him to intervene under the decisions generally, and no statute of the United States gives him any greater right to intervene.

For the reasons above shown, the order of the court below denying appellant's petition to intervene is not a final and appellable order for, as stated by this Court in *United States* v. *California Canneries*, 279 U. S. 553 (p. 566):

> "* * * an order denying leave to intervene is not appealable, *In re Cutting*, 94 U. S. 15; *Credits Commutation Co.* v. *United States*, 177 U. S. 311; *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578, 581; *In re Engelhard*, 231 U. S. 646; *City of New York* v. *Consolidated Gas Co.*, 253 U. S. 219; *New York* v. *New York Telephone Co.*, 261 U. S. 312, except where he who seeks to intervene has a direct and immediate interest in a

res which is the subject of the suit, compare *French* v. *Gapen*, 105 U. S. 509, 524-526; *Smith* v. *Gale*, 144 U. S. 509; *Leary* v. *United States*, 224 U. S. 567; *Swift* v. *Black Panther Oil & Gas Co.*, 244 Fed. 20, 30."

This Court, therefore, is without jurisdiction to entertain the appeal.

Dated January 22, 1947.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 970

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

Appellant,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PERE MARQUETTE RAILWAY COMPANY, AND WABASH RAILROAD COMPANY,

Plaintiffs-Appellees,

INTERSTATE COMMERCE COMMISSION,

Intervening Plaintiff-Appellee,

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, CHICAGO JUNCTION RAILWAY COMPANY, AND THE NEW YORK CENTRAL RAILROAD COMPANY,

Defendants-Appellees.

MOTION TO DISMISS OR AFFIRM

Come now The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Erie Railroad Company, Grand Trunk Western Railroad Company,

The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, and Wabash Railroad Company, Plaintiffs-Appellees, by Ernest S. Ballard, William F. Price and Walter I. Deffenbaugh, their attorneys, and move this Court to dismiss with costs the appeal taken herein to this Court by the Brotherhood of Railroad Trainmen upon the ground that the order denying said appellant leave to intervene in this cause is not a final and appealable order and that hence this Court has no jurisdiction to entertain said appeal.

And said Plaintiffs-Appellees by their attorneys as aforesaid, in the alternative, move this Court to affirm said order from which said appeal purports to have been taken, because although the record in said cause may show that this Court has jurisdiction in the premises, yet it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to need further argument.

Dated January 22, 1947.

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